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L.M., Appellant)	
)	
and)	Docket No. 13-2017
)	Issued: February 21, 2014
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Corpus Christi, TX,)	
Employer)	
)	

Case Submitted on the Record

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

The Board, having duly considered the matter, concludes that the case is not in posture for decision and must be remanded for further development. In a decision dated May 17, 2013, OWCP affirmed a November 7, 2012 decision denying compensation from June 19 to 23, 2012 and a November 9, 2012 decision denying compensation from February 13 to 28, 2012.¹ It denied the claims on the grounds that these periods were after the February 8, 2012 effective date of an April 23, 2012 decision finding appellant had no loss of wage-earning capacity based on her actual earnings in a modified position. OWCP listed the customary criteria for modifying a

¹ The Board notes that, in its November 7 and 9, 2012 decisions, OWCP found that the April 23, 2012 wage-earning capacity determination served as a bar to the receipt of additional compensation. It did not cite to or analyze the customary criteria for modifying a loss of wage-earning capacity determination.

standing wage-earning capacity determination, but did not make findings of fact or explain how the evidence of record failed to meet those criteria.²

The Board has clearly held that modification of a standing loss of wage-earning capacity determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous.³ OWCP's procedures provide that, if a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant request resumption of compensation for total wage loss. In this instance, the claims examiner will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity.⁴ The burden of proof is on the party attempting to show a modification of the loss of wage-earning capacity determination.⁵

In this case, the Board is unable to determine if OWCP applied the customary criteria in denying modification of appellant's wage-earning capacity determination.

Section 8124(a) of the Federal Employees' Compensation Act provides: "OWCP shall determine and make a finding of fact and make an award for or against payment of compensation..."⁶ Section 10.126 of Title 20 of the Code of Federal Regulations provides: "The decision shall contain findings of fact and a statement of reasons."⁷ The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it."⁸

The case must be returned to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding whether appellant has met her burden of proof under the customary standards to establish modification of her wage-earning capacity determination.

² The Board notes that OWCP also cited to criteria for adjudicating a recurrence of disability following a return to light duty, without explaining why the evidence of record did not meet those criteria. The decision ends with the citations to Board precedent and the Federal (FECA) Procedure Manual, without an analysis of the cited criteria.

³ *D.E.*, Docket No. 13-1327 (issued January 8, 2014); *Sue A. Sedgwick*, 45 ECAB 211 (1993); *Elmer Strong*, 17 ECAB 226 (1965).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claim, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995). *See also* FECA Transmittal 10-01 (issued October 5, 2009).

⁵ *Selden H. Swartz*, 55 ECAB 272 (2004).

⁶ 5 U.S.C. § 8124(a); *See Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colossi*, 56 ECAB 294 (2005).

⁷ 20 C.F.R. § 10.126. *See O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *Tonja R. Hiebert*, 55 ECAB 706 (2004) (it is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions).

⁸ *See Paul M. Colosi*, 56 ECAB 294 (2005) (a final OWCP decision must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6 (February 2013) (notes that a disallowance decision is a legal document which serves as the basis for further actions in the claim and that OWCP should write a clear, understandable decision that keeps the reader in mind, as the explanation of benefits will be read by those who are not experts in workers' compensation matters).

Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 17, 2013 is set aside and this case remanded for further action consistent with this order of the Board.

Issued: February 21, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board